

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA

MARK ANTHONY BARNETT,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No. CIV-10-153-D
	)	
ERIC FRANKLIN, Warden,	)	
	)	
Respondent.	)	

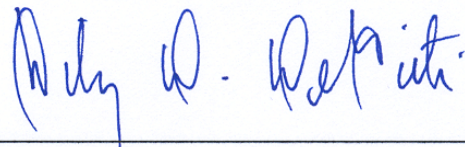
**ORDER GRANTING CERTIFICATE OF APPEALABILITY**

On this date, the Court issued an Order and entered a Judgment denying the Petition Under 28 U.S.C. § 2254. Pursuant to 28 U.S.C. § 2253(c)(1), Petitioner may not appeal the denial of his Petition unless he obtains a certificate of appealability (COA), and pursuant to Rule 11(a) of the Rules Governing Section 2254 Cases, the Court must issue or deny a COA when it enters a final order adverse to a petitioner.

A COA is claim specific and appropriate only if Petitioner “has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2), (c)(3). When a claim has been denied on the merits, the COA standard is whether “reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). “A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the district court’s resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

Upon consideration, the Court finds this standard is met in this case solely with respect to Petitioner's claim of ineffective assistance of counsel. In light of the disagreement between the undersigned and Judge Bacharach concerning the proper resolution of this claim, the Court finds that a COA should be granted, limited to the following issues: whether Petitioner is entitled to an evidentiary hearing regarding his claim of ineffective assistance of trial counsel; and whether Petitioner can establish ineffective assistance of trial counsel.

IT IS SO ORDERED this 25<sup>th</sup> day of June, 2013.



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TIMOTHY D. DEGIUSTI  
UNITED STATES DISTRICT JUDGE